

as, in the further progress of the cause, may appear to be proper.

The petition of Mr. Wilson prays that the trustee who made the sale, under the decree in this cause, may be authorized and directed, by an order, to credit upon his purchase, the amount of Henry Robinson's interest in the lands so sold. But, as for the reasons stated, I am of opinion, he is not entitled to this relief, his petition will be dismissed.

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PRATT and RANDALL, for Wilson.

ALEXANDER, for the Trustee.

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JOSHUA HITCH,  
vs.  
SAMUEL FENBY.

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DECEMBER TERM, 1850.

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[BILL OF REVIEW—PRACTICE—USURY.]

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A BILL of review for new facts or newly discovered facts, must aver that such facts came to the knowledge of the complainant within nine months prior to the filing of his bill.

Between the same parties, and for the same matters, a new original bill cannot be brought after a decree has been made in a cause and enrolled, unless it was obtained by fraud.

A decree was passed in 1841 for the sale of certain mortgaged property to pay a balance claimed in the bill to be due on the mortgage debt, which sum was admitted by the answer of the defendants *under oath* to be due. Seven years afterwards, the defendants filed their bill to open this decree upon the ground that it was passed in pursuance of an agreement as a mere security for any balance that might be found due on settlement of their mutual dealings, and then charging usury and other objections against complainant's claim.

HELD—

1st. That after such lapse of time, it would require a very strong and clear case to justify the interference of the court to prevent the alleged fraudulent and oppressive use of this decree.

2d. Not having set up the defence of usury at the time the decree was passed, although he was well aware of the facts upon which the charge is based, and having offered no satisfactory excuse why he did not take the defence then, he cannot be allowed now to open the decree to let in this defence.

Prior to the act of 1845, ch. 352, the plea of usury by the mortgagor or his